

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE PROCTER & GAMBLE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 08-066-JJF
)	
TEVA PHARMACEUTICALS USA, INC.,)	
)	
Defendant.)	

JOINT MOTION TO STAY ALL PROCEEDINGS

Plaintiff The Procter & Gamble Company (“Procter & Gamble”) and Defendant Teva Pharmaceuticals USA, Inc. (“Teva USA”) move for an order staying all proceedings in this case until the Court issues an opinion concerning the outcome of the trial in *The Procter & Gamble Co. v. Teva Pharmaceuticals USA, Inc.* (No. 1:04-cv-000940-JJF) (the “Pending Action”), a related case pending before this Court involving the same patent and similar legal and factual claims.

In support of this motion, Procter & Gamble and Teva USA state as follows:

1. The present case is a patent infringement action involving Procter & Gamble’s U.S. Patent No. 5,583,122 (the “‘122 Patent”). It relates to Teva USA’s Abbreviated New Drug Application No.79-215, submitted to the FDA under Section 505(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355(j)), seeking approval to engage in the commercial manufacture, use, and sale of tablets containing 75 mg of risedronate sodium, a generic version of the 75 mg form of ACTONEL® tablets, before the expiration date of the ‘122 Patent.

2. This action is related to a patent infringement action currently pending before this Court, *The Procter & Gamble Co. v. Teva Pharmaceuticals USA, Inc.* (No. 1:04-cv-000940-JJF) (the “Pending Action”), which also involves the ‘122 Patent. Like the present action, the

Pending Action arises under 35 U.S.C. §§ 271 and 281. The Pending Action relates to ANDA No. 77-132 filed by Teva USA with the FDA for approval to market a generic version of Procter & Gamble's ACTONEL® drug product in 5 mg, 30 mg, and 35 mg forms.

3. On November 6-8, 2006, this Court held a trial on the merits in the Pending Action.

4. Prior to trial in the Pending Action, Teva USA stipulated for purposes of that litigation that its commercial marketing of its products at issue in the Pending Action would infringe claims 4, 16, and 23 of the '122 Patent if those claims were valid. As a result, the sole issue litigated during that trial was the validity of those claims.

5. Teva USA agrees, for purposes of this action, that its commercial marketing of its proposed generic version of the 75 mg form of ACTONEL® tablets would also infringe claims 4, 16, and 23 of the '122 Patent if those claims are valid. As a result, the only issue to be litigated in this action is the validity of those claims.

6. Procter & Gamble and Teva USA agree that, subject to any appeal, the Court's determination in the Pending Action of the validity of claims 4, 16, and 23 of the '122 Patent will determine the validity of those claims in this case as well.

7. As a result, a stay of this case pending this Court's decision in the Pending Action would promote judicial efficiency by conserving the resources of the Court and the parties. *See Maloney v. Gordon*, 328 F. Supp. 2d 508, 513 (D. Del. 2004) (where related case may "potentially eliminate the need to litigate some or all of the issues in the case," staying instant case preserves judicial resources); *Commissariat A L'Energie Atomique v. Dell Computer Corp.*, No. Civ. A. 03-484-KAJ, 2004 WL 1554382, at *3 (D. Del. May 13, 2004) (granting motion to stay patent infringement proceedings against OEM distributors and retailers pending resolution

of litigation against manufacturers involving the same patents to “conserv[e] judicial resources and expense to the parties”); *United Sweetener USA, Inc. v. Nutrasweet Co.*, 766 F. Supp. 212, 217 (D. Del. 1991) (setting forth test for propriety of a stay).

8. The parties agree that when the Court enters judgment in the Pending Action, it may immediately enter a judgment in this case that is identical to the judgment in the Pending Action with respect to the validity and infringement of claims 4, 16 and 23 of the ‘122 Patent.

9. This action is newly filed, and no trial date has been set. Accordingly, the stay will be entered before the Court or the parties expend substantial resources.

10. For these reasons, Procter & Gamble and Teva USA respectfully request that the Court enter the proposed order submitted herewith.

/s/ Steven J. Fineman

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